IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11459 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HEIRS OF N I CHHIPA- GULAMMAHMAD N CHHIPA - Petitioner(s)
Versus
ATAJI CHHAGANJI & 1 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/03/2007

ORAL JUDGMENT

1. Shri Jitendra M. Patel, learned counsel for the petitioner; none for the respondent though name of Shri H.B. Pujara, learned counsel appears.
2. According to the petitioner, his father Shri Noormohammad

Ibrahim Chhipa [since deceased] had purchased tenancy rights vide sale deed dated 23.12.41, he could not be deemed to be deemed purchaser in view of Section 88-B of the Bombay Tenancy & Agricultural Lands Act as the certificate issued by the competent authority in favour of a religious trust would protect the Trust. On 15.11.69, Gujarat Devasthan Inam Abolition Act, 1969 came into force, consequently, all rights of the religious institutions in the properties which they had leased out came to an end. It was also observed that a tenant from such religious institutions would be taken to be deemed purchaser in view of newly incorporated Section 88-E in the Tenancy Act. Gujarat Devasthan Abolition Act came to be challenged before this Court, but the challenge was rejected by this Court in the judgment reported in 13 GLR 404. The judgment of this Court was confirmed by the Supreme Court in the matter reported in AIR 1974 SC 2098. Somewhere in the year 1971, the Mamlatdar had initiated an inquiry under Section 32-G of the Tenancy Act, parties were examined but the judgment was not delivered because of the writ petitions challenging vires of the Abolition Act, 1969 and as the matter was pending before the Supreme Court. After the Supreme Court had delivered the judgment, the matter was again taken up for consideration in the year 1981.

3. The petitioner says that instead of declaring judgment in the case on strength of the evidence already available on the records of the case, on 30.10.86, the Mamlatdar again started examining the witnesses and after hearing the parties held that the present respondent Ataji Chhaganji would be held to be a deemed purchaser under the provisions of the Act. On 24.3.88, Tenancy Appeal No. 241/86 filed by the present petitioner was dismissed and Revision Application No. TEN-BA 409/88 filed by the

petitioner was dismissed on 18.3.94. Being aggrieved by the said order, the petitioner is before this Court.

4. Shri Patel, learned counsel for the petitioner has challenged the order only on two grounds, which I will take up one by one.

5. Shri Patel submits that if in the year 1971, matter was kept in suspended animation or in abeyance because of the pendency of some matters, then in the year 1981 or 1986, the Mamlatdar could not reopen the matter and allow Ataji Chhaganji to lead evidence nor could he decide the matter on strength of the evidence led afresh.

6. In the opinion of this Court, the argument is patently misconceived. In the year 1971, the petitioner had moved before the Mamlatdar for declaration that in view of Gujarat Devasthan Inam Abolition Act and insertion of Section 88-E in the Tenancy Act, he be held to be deemed purchaser, but in the year 1981, suo motu proceedings [as Shri Patel says] were initiated by the Mamlatdar. The said Mamlatdar was required under the law to decide the question that whether the present respondent would be taken to be a deemed purchaser for the purposes of the Tenancy Act. It appears that present petitioner had filed an application for cancellation of the name of Ataji Chhaganji wherein a decision was taken on 30.12.81 rejecting the petitioner's application and it was directed that the Mamlatdar cum ALT will proceed under Section 88-E of the Act. If the order dated 30.12.81 was accepted by the parties and it had attained finality, and specially when an argument was not raised before the subordinate authorities that they could not reopen the case, then the petitioner would not be allowed to raise this question for the first time before the High Court.

7. If on 30.12.81, it was directed that inquiry be made under Section

88-E, then the Mamlatdar was obliged to make such inquiry and if the petitioner was aggrieved by the order dated 30.12.81, or by its effect, then at least he should have challenged the correctness, validity and propriety of the said order either independently or in these proceedings which were taken up in appeal.

8. It was then contended that the respondent had made certain admissions in favour of the petitioner, therefore, it could not be held that he would acquire rights of a deemed purchaser.

9. It is to be seen that the earlier proceedings of 1971 when were pending, certain statements of Ataji Chhaganji were recorded, but later on in 1981 inquiries he had explained his earlier admissions and if that be so and all the Tribunals have found concurrently that such admissions do not bind the respondent, then there is no reason for the High Court to take any view contrary to the view taken by the authorities. Both the grounds raised by the petitioner are not tenable.

10. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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